

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2597 of 2009

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1. Smt. Meena Das Daughter of late Bhup Narayan Lal Das, Wife of Uma Shankar lal Das, aged about 57 Resident of Adarsh Path, Katchari Road, Baidyanath, Deoghar (Jharkhand)- 814112

2. Sri Lalan Kumar Son of late Bhup Narayan Lal Das, aged about 55 years Resident of Chitragupta Nagar, Kayasth Tola, P.O. +District- Saharsa.

3. Sri Raman Kumar Son of late Bhup Narayan Lal Das, aged about 51 years Resident of Adarsh Colony, West Patel Nagar, P.O. -L.B.S. Nagar, P.S. Shastrinagar, Patna- 800023

4. Smt. Veena Arbind Daughter of late Bhup Narayan Lal Das, Wife of Dhirendra Kumar Das, aged about 51 years Resident of Village+ P.O.- Paraul, Via Kaluahi, P.S. Arer, District- Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar , through its Chief Secretary, Old Secretariat, Patna.

2. The Secretary, Department of Cooperative, Government of Bihar, Patna.

3. The Registrar, Cooperative Societies, Government of Bihar, Patna.

4. The District Cooperative Officer, Patna.

5. The Bihar Asainik Sewa Sahkari Griha Nirman Samiti Ltd. Patna, Magistrate Colony, Khajpura, P.S. Shastri Nagar, Patna- 800025

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Yogendra Mishra, Sr. Adv.
Mr. Hari Shankar Roy, Adv.

For the Respondent/s : Mr. Ashutosh Singh, Adv.
Mr. Dhirendra Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 06-03-2018

The instant writ application was filed by the original petitioner Bhup Narayan Lal Das *inter alia* for the following reliefs:-

- (i) For issuance of a writ in the nature of writ of certiorari for quashing the order dated 02.09.2008 passed by the Registrar Co-operative Societies, Bihar, Patna by which he has dismissed the petitioner's application registered



vide Dispute Case No. 103 of 2005 and Dispute Case No. 13 of 2006 after declaring that the Managing Committee of the Bihar Asainik Sewa Sahkari Grih Nirman Samiti Ltd. (for short 'Society') is a *non est* body in the eyes of law.

- (ii) For quashing the letter dated 29.10.2007 of the Secretary of the Society by which the petitioner's membership of the said Society has been terminated.
- (iii) For issuance of a writ in the nature of mandamus commanding the respondents to ensure that a plot of land of category and area which the petitioner is entitled to in the Society by virtue of his membership of the Society is allotted to him and possession of the same is given to him completing all formalities such as registration etc. and to pay fine and suitable compensation.

2. Be it noted at the outset that the original petitioner Bhup Narayan Lal Das died on 09.03.2011, by order dated 30.08.2011, his heirs and legal representatives were substituted. Subsequently, one of the substituted heir Smt. Damyanti Das wife of the original petitioner also died on 28.07.2014 and her name was ordered to be expunged vide order dated 26.02.2018 passed by this Court.



3. Learned counsel for the petitioners submitted that impugned order dated 02.09.2008 passed by the Registrar Co-operative Societies, Bihar, Patna is not sustainable in law because the same has been passed without considering the relevant facts and taking into account the irrelevant one. He has wrongly refused to entertain the petitioner's application filed under Section 48(1)(a)(b), 14(9) and 14(10) of the Bihar Co-operative Societies Act, 1935 (for short 'the Act, 1935') on the ground of pendency of parallel proceeding, which was not statutory. The respondent no.3 committed an error of record in holding that the petitioner was demanding and insisting on increase of area of the plot, which was being allotted to him. The Society instead of handing over the possession of plot no. A/50 carved out from Survey Plot No. 346 offered a smaller plot carved out of Survey Plot No. 370 which led to the dispute. He submitted that the termination of the membership of the original petitioner from the Society was on extraneous considerations and the same was done in breach of the various statutory provisions of the Act, 1935 and the rules framed thereunder as also the bye-laws of the Society.

4. Per contra, learned counsel appearing for respondent no. 5 submitted that there is no illegality in the order passed by the Registrar, Co-operative Societies. He submitted that all the issues



raised in this writ petition has in fact been settled by the appropriate forum as also by this Court and not even a single issue or content of this writ petition is new which can attract judicial intervention of this Court. He submitted that the Society in its general body meeting of its members decided to terminate the membership of the original petitioner from the Society and the Board of Directors approved the same with liberty to the terminated member to file review/appeal within thirty days as provided by the by-laws of the Society, but he did not file any review/appeal. Instead of filing a review petition, he filed a petition before the Registrar, Co-operative Societies, Bihar, Patna. Even in the said petition the terminated member had not challenged the termination of his membership from the Society. He submitted that on the facts and in the circumstances of the case the Registrar, Co-operative Societies while dismissing the application of the petitioner rightly observed that the petitioner failed to exercise option in terms of the order dated 04.03.2005 passed in C.W.J.C. No. 4541 of 1999. It is further argued by the learned counsel for the respondent no.5 that since the petitioner was not member of the Society, there was no question of allotment of any piece of plot in his favour. Even otherwise, the Society has no land/plot in order to make any allotment in favour of any of its existing member. He submitted that the writ petition is fit to be dismissed on the ground that the



petitioner failed to invoke alternative remedy available in law in respect of the prayer made by him in the present writ petition.

5. I have heard learned counsel for the parties and perused the record.

6. Undisputed facts of the case are as under. The Society had allotted plots to the original petitioner and 12 other members of the Society. Since allotment could not materialize as land could not be available to the Society, the allotments so made were subsequently revised in which a plot measuring 3885 sq. ft. was allotted to the petitioner. Twelve other members were also given land either of the same area or even smaller than what was allotted to the petitioner. Since the earlier allotment was of 3926 sq. ft., the petitioner insisted for the same area with similar location and situation. While 12 other members accepted the revised allotment, the petitioner did not accept it. He moved before the Registrar Co-operative Societies for a direction to the Society to ensure allotment of the land of the same area with same locations and situations. The Registrar Co-operative Societies directed the Society to provide land of similar area with similar location and situation. The Society was unable to provide such plot to the petitioner and offered him any alternative plot which was feasible for the Society to provide him at that point of time. He filed complaint before the Registrar alleging that his direction was not



complied with by the Society. The Registrar Co-operative Societies ordered supersession, which was initially stayed by the learned Minister in appeal, but subsequently the order of supersession was upheld in appeal. The Society moved this Court against the order of supersession vide CWJC No. 4541 of 1999, which was allowed and the order of supersession was quashed vide order dated 04.03.2005 with certain observations.

7. The order passed in C.W.J.C. No. 4541 of 1999 describes the entire background and history of allotment of plot to the petitioner as also his non-cooperative and non accommodative attitude in accepting the offers of the Society. The relevant portion of the order dated 04.03.2005 in C.W.J.C. No. 4541 of 1999 is extracted hereunder :-

“At this stage, it will be necessary to take a brief look at the relevant and material facts. The Society was formed and registered with the object and purpose to provide plots of land to its members for constructing residential houses. Respondent no.7 is one of the members of the Society and like other members he had made the necessary payments for allotment of a plot of land. In the general body meeting held on 16.6.1985 the allotment of plots to the members of the Society was made by means of lottery. Respondent no.7 was allotted plot no. A/50 which was part of survey plot no. 348. However, it later came to light that



there had been some mistakes in the allotment of plots to respondent no.7 and twelve other members of the Society. Survey plot no. 348 (from which plot no. A/50 allotted to respondent no.7 and several other plots allotted to twelve other members of the Society were carved out) was not acquired by the Society. In the preparation of the map the draftsmen had wrongly shown that survey plot among the land acquired by the Society. As a result of this mistake pieces from survey plot no. 348 were wrongly included in the plots available for allotment to the members of the Society. Consequently respondent no.7 and twelve other members of the Society could not be given delivery of possession of the respective plots allotted to them in the general body meeting of 16.6.1985.

The Society then purchased some more land in the same area and on 17.1.1988 made fresh allotment of plots to the thirteen members, including respondent no.7. This time respondent no.7 was given plot no.A/50 that was carved out from survey plot no.370. Though the other twelve members accepted the plots allotted to them, respondent no.7 refused to accept the plot given to him on 17.1.1988. He insisted for a plot having the same area with the same dimensions and the same facilities as plot no.A/50 (carved out from survey plot no.348) earlier allotted in his favour. It was not possible for the Society to satisfy the demand of respondent no.7. He refused to accept the plot allotted in his favour on 17.1.1988 and thus he opted out even



while all the other members were given plots by the Society.

In those circumstances respondent no.7 filed a petition under section 48 of the Bihar Cooperative Societies Act, 1935 (which was registered as Dispute Case No. 37 of 1994 before the Joint Registrar, Cooperative Societies) asking for a direction to the Society to allot a plot in his favour. The case was disposed of by an ex-parte order dated 26.10.1994 by which the Society was directed to give respondent no.7 a plot of land of the same area and dimensions and having the same advantages of location as the plot that was originally allotted to him in the meeting of 16.6.1985. Though the proceedings of the Dispute case show that notices were twice served upon the Society, it is stated by the petitioners that in fact the Society's office bearers never received any notice and the ex-parte order was passed on the basis of a collusive service report of notice.

It is the case of the petitioners that though the Society was willing and ready to give to respondent no.7 a plot of land, the best one that was available to it at that time, it was not possible for it to carry out the direction given by the Joint Registrar for the simple reason that the Society did not have a plot of land of the area and dimensions and with the advantages of location as demanded by respondent no.7.

For the failure of the Society to give him a plot of land exactly as directed by the Joint Registrar



respondent no.7 filed Supersession Case No. 22 of 1995 as also a petition for initiating proceedings of contempt of court against the Society and its office bearers. The second petition was registered as Contempt Case No. 23 of 1995 and both the cases were transferred to the Joint Registrar.

The petitioners state that the proceedings in the two cases were held in a highly irregular manner and in complete violation of the law and the principles of natural justice.

Without going into those allegations it may be noted that at that stage too there was an attempt at conciliation between the two sides. Before the Joint Registrar respondent no.7 seems to have expressed the choice for plot no.A/50 from survey plot no. 362. It was, however, not possible for the Society to meet the demand of respondent no.7. In the end, the proceedings went before the Addl. Registrar, Cooperative Societies who passed the order of supersession on 24.1.1997 which was later confirmed by order dated 6.4.1999 passed by the Cooperative Minister.

In the early stages of proceedings of this case before this Court, a plea was taken by the petitioners that respondent no.7 had land(s)/house(s) in this town in his own name and/or in the name of his wife and he was, therefore, not entitled to allotment of a plot of land by the petitioner Society as provided in its by-laws and/or a resolution adopted by its managing committee. Respondent no.7 made a counter allegation



that in the case of atleast twenty four other members the Society had allotted them land regardless of the fact that each of them had from before landed properties in this town either in their own names or in the name of their respective spouses or minor children. As the parties were seriously at issue on this point the court by order dated 4.2.2000 sent the matter for enquiry before Shri Dharnidhar Jha who at that time was an Addl. District & Sessions Judge, posted as Joint Registrar, Bihar State Legal Services Authority. In his enquiry report dated 17.5.2000 Shri Jha found and held that there was some truth in the allegations of both the sides made against each other. He found that Shri P.K. Sinha (who was originally petitioner no.2 being the Secretary of the Society at the time of filing of the writ petition) had certain share in a house situate at Machchua Toli, Patna which was an ancestral joint family property. He also held that at least one of the twenty five members of the Society, namely, Shri Nagendra Tiwari had another property situate in New Patliputra colony from before. But he also found that long before Society allotted a plot to respondent no.7, a piece of land at Patna was purchased in the name of his wife which was later mutated in his name in the Municipal records. The report also indicated that the affidavit that was submitted to the Society on behalf of respondent no.7 was quite vague and equivocal on this question.

Here it may be noted that the office bearers of the Society at whose instance the writ petition was



originally filed seemed to take an antagonistic stand against respondent no.7 and they consistently took the plea before the court that respondent no.7 was not entitled to a plot of land from the Society for his various acts of omission and commission. This position, however, was fundamentally altered. During pendency of the case fresh elections were held twice and on 30.5.2004 a new managing committee was elected. In the new managing committee M/s Ram Vinod Singh and J.C. Das were elected as the Secretary and the President respectively and from that stage they were authorized to prosecute the case on behalf of the Cooperative Society. Therefore, on a prayer made on their behalf by order dated 3.12.2004 they were brought on record as petitioners 2 and 3 and the original petitioners 2 to 9 were transposed as respondents 8 to 15. The new set of office bearers seem to have adopted a very conciliatory attitude towards respondent no.7 and from the petitioners/affidavits filed on their behalf (after the order dated 3.12.2004) it would appear that they were taking all possible steps to give respondent no.7 a suitable piece of land and to redress his grievances.

On 17.2.2005 fourth supplementary affidavit was filed on behalf of the newly added petitioners. This affidavit brought on record the minutes of the meetings of the Society's managing committee held on 5.2.2005 and 14.2.2005. In its meeting of 14.2.2005 the managing committee took the resolution making the



following offer to respondent no.7 :

“4. SRI DAS KO BHUIKHAND UPLABDH KARANE AUR SARVASAMATI SE NIMNLIKHT ‘OFFER’ DENE KA NIRNAI LIYA GAYA.

(KA) SURVEY PLOT SANKHYA 370 MAIN 3885 WARG FEET KA BHUKHAND 16’ PAHUNCH-PATH KE SAATH UPLABDH HAI. PATH KA NIRMAN KARYA PARARAMBH HO CHUKA HAI. JIS KA ASTHAL NIRICHAN SRI DAS DINAK 05.02.05 KO KAR CHUKE HAIN. HEH PARHAM ‘OFFER’ HAI JO PURVA SE SRI DAS TO AWANTIT HAI.

(KHA) SURVEY KHESRA SANKHYA 409 MAIN LAGBHAG 3000 WARG FEET BHUKHAND 12’ PAHUNCH PATH (SOULING WALA PRIVATE) PAR AWASTHIT HAI JO SAMJHAUTA KA AADHAR BAN SAKTA HAI.

(GA) KANDIKA 1 MAIN VARNIT 16’ PAHUNCH PATH KE PARARAMBH MAIN HI KHESRA SANKHYA 377 MAIN 3000 VARG FEET BHUMI UPLABDH KARAYA JA SAKTA HAI BASHRATE KI SRI DAS ANYTRA ATRIRIKT CHETRAPHAL KI MAANG NA KARAIN.

(GHA) YADI UPRUKT VIKALPON MAIN KOI SAVIKARYA NAA HO TO OONHAIN BANK DAR PAR SOOD KE SAATH OON KE DWARA JAMA KI GAI RASHI WAPAS KI JA SAKTI HAI JO OOPAR VARNIT BHUKHAND MAIN KISI EK TO BAZAR DAR PAR BIKRI KE BAAD HI



SAMBHAV HO SAKTA HAI.”

A copy of the fourth supplementary affidavit was received by respondent no.7 on 17.2.2005 and he was given a week's time to make his response. On 25.2.2005 a reply affidavit was filed on his behalf in which he seems to take a highly stubborn and obstinate attitude. **From paras 5 to 9 of his affidavit it appears that he is not willing to accept the plot offered to him from survey plot no.370 (as indicated at serials 4(ka) above) or the other two plots and nothing seems to be acceptable to him other than a lay out plot from survey plot no.362. Though it is not stated in so many words in the reply affidavit, Mr. S.S.Asghar Hussain, learned Senior Advocate appearing on his behalf stated that the offer made by the petitioners was not acceptable to respondent no.7.**

From the strange and curious attitude taken by respondent no.7 it appears that he is not interested in a plot of land but for reasons best known to him he only wants to carry on a futile and useless litigation. In course of this proceeding this Court tried to help respondent no.7. The counsel appearing for the petitioners was told clearly that in fairness the Society must allot to him a suitable piece of land. It was partly due to the observations of the court that the petitioners changed their attitude towards respondent no.7, agreed to redress his grievances to accommodate him. It was with



that end in view that the Society made him an offer of three plots but from his obdurate stand the court is convinced that it is impossible to help respondent no.7.

Respondent no.7 is demanding from the Society something that is impossible for it to give. It is not that survey plot no.362 is still available to the Society and yet it is not giving a lay plot from it to respondent no.7. Survey plot no. 362 is not available to the Society and for that reason alone no part of it the Society can give to respondent no.7.

From the discussions made above, it is manifest and clear that the direction by the Joint Registrar to the Society to allot a plot in favour of respondent no.7 stands fully satisfied and there would be, therefore, no reason to supersede the Society for non-compliance with that order. The impugned order of supersession as contained in Annexures 6 and 8 are accordingly set aside.

Before closing this matter, the court would still like that respondent no.7 be given one more chance. It is accordingly directed that it will be open to respondent no.7 to intimate the Society in writing within two months from today in regard to his acceptance of any of the three plots offered to him or in lieu of the land to accept the money as offered to him by the Society. In case respondent no.7 gives such an intimation to the Society within two months, the Society will allot in his favour the plot of land opted by him and shall complete



the formalities of transfer and registration without any delay. In case respondent no.7 opts for payment of money, it would be similarly paid to him within two months from the date of receipt of his letter. In case, however, respondent no.7 fails to exercise his option within two months from today, the Society will be free to dispose of three plots of land as it may deem fit and proper, in accordance with law and the rules and by-laws governing it.”

(emphasis mine)

8. After the aforesaid order passed in C.W.J.C. No. 4541 of 1999, the petitioner submitted his representation and option for Survey Plot No. 377. The Society allotted Survey Plot No. 377 to the petitioner vide order dated 04.04.2005 and requested him to take possession of the land and invited submission of his confirmation with respect of option. Again, vide letter dated 08.07.2005, the Society informed the petitioner that the Board of Directors had decided that if he fails to avail the opportunity, the allotment shall automatically stand cancelled with the expiry of a period of 30 days. However, the petitioner failed to avail of the opportunity within the stipulated time and he filed contempt petition before this Court vide MJC No. 1747 of 2005, which was dismissed by this Court, vide order, dated 16.11.2006. Thereafter, the Society in its general body meeting of its members decided to terminate the membership of the



original petitioner Bhup Narayan Lal Das from the Society and the Board of Directors approved the same with liberty to the petitioner to file a review/appeal, as provided by the bye-laws of the Society, but the petitioner did not file any review/appeal. Instead of filing a review/appeal, he filed a petition in the court of Registrar, Co-operative Societies, Bihar, Patna vide Case No. 103 of 2005 under Section 48(1)(a) of the Act, 1935. Even in the said petition, the petitioner did not challenge the termination of his membership from the Society. The Registrar, Co-operative Societies, after hearing both sides in Dispute Case No. 103 of 2005, passed his order on 02.09.2008, as contained in Annexure-29 to the writ petition. From perusal of the order, it would be manifest that it is against the offer and allotment of 3000 sq.ft. in plot no. 377. The petitioner was insisting for allotment of a plot of an area of 3926 sq.ft. The Registrar, Co-operative Societies, dismissed his petition saying that the area of 3000 sq.ft. in plot no.377 cannot be stretched any more and the petitioner's demand for 3926 sq.ft. is not legal.

9. Apparently, the present position is that the petitioner is not a member of the Society as his membership has already been terminated. The termination order was not challenged even though for other reliefs the petitioner had approached the Registrar, Co-operative Societies, which would mean that he had waived his right to



challenge the decision of termination of membership. Moreover, even in the termination order, it has clearly been mentioned that the petitioner may file review/appeal within thirty days from the date of receipt of the order but the petitioner failed to avail of the remedy of review/appeal.

10. Under the circumstances, this Court is of the opinion that no relief can be granted to the petitioner. The writ petition is devoid of any merit. It is accordingly dismissed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	31-03-2018
Transmission Date	

